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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. [redacted] 252

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MRS. L. E. WILLIAMS, INDIVIDUALLY AND AS NATURAL TUTRIX OF HER MINOR SON, JOHN EARL WILLIAMS,

Petitioner,

versus

GREAT SOUTHERN LUMBER COMPANY,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals, for the Fifth Circuit, and Brief in Support Thereof.

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MONTGOMERY-ANDREE PRINTING CO. INC., 807 CHARTRES, N. O.

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GREAT SOUTHERN LUMBER COMPANY,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals, for the Fifth Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, MRS. L. E. WILLIAMS, a citizen of the State of Louisiana, acting individually and

as the natural tutrix (guardian) of her minor son, JOHN EARL WILLIAMS, respectfully shows:

I.

That your petitioner filed an action at law in the United States District Court for the Eastern District of Louisiana in her individual capacity and as the natural tutrix (guardian) of her minor son, JOHN EARL WILLIAMS, for $50,000.00 damages for the unlawful killing of L. E. WILLIAMS, her husband, and the father of her said minor son, against the GREAT SOUTHERN LUMBER COMPANY, a corporation organized under the laws of Pennsylvania, but doing business in the State of Louisiana.

II.

She charged that her husband was brutally and maliciously killed without any cause or provocation at his home and place of business in the lumber town of Bogalusa, La., by the white guards and the agents, officers, and employees and gunmen of the Defendant Company, acting within the scope of their employment and for the benefit of the Company in furtherance of a conspiracy by the said tort feasors to kill L. E. Williams and his associates for the sole reason that Williams was a leader in organizing the white and negro laborers of the Defendant Company's Lumber Mill, in a labor union, the motive being to remove him from that sphere of activity and thus destroy organized labor in Bogalusa.

III.

The defendant denied said charge and alleged that plaintiff's husband had been shot and killed by a duly appointed and qualified posse of peace officers appointed by the Police Commissioner while he was unlawfully resisting such officers in attempting to serve warrants which had been issued by the Court of the City of Bogalusa, for the arrest of Sol Dacus, a negro labor leader, and Bouchillon and O'Rourke, white men, who were charged with disturbing the peace.

IV.

After a trial, which lasted about four weeks, the jury rendered a verdict for $50,000.00 in favor of petitioner against the Defendant Company.

V.

Defendant filed a motion for a new trial assigning some twenty-three alleged errors, which motion was argued before District Judge Beattie, but Judge Beattie having died before rendering a decision, the motion was reargued before District Judge Dawkins, who found no error except as to the amount of the verdict and dismissed the motion upon the plaintiff's entering a *remittitur* reducing the amount to $30,000.00.

VI.

Respondent then sued out a writ of error to the Court of Appeals assigning the same twenty-three errors which Judge Dawkins had overruled. The

Court of Appeals reversed the judgment of the District Court and remanded the case for a new trial on two alleged errors, which your petitioner now shows are not at all errors, but, if errors, are not errors which affect the substantial rights of defendant, viz:

1. The Court of Appeals held that the District Court had erred in refusing to allow the defendant to show that Bouchillon and O'Rourke, two white labor union men, while parading the main street of the town of Bogalusa, about two hours before the killing of Williams, armed with guns, with Dacus, the negro labor organizer between them, had, by spoken words, threatened any white man who should attempt to take Dacus from them, on the ground that the said words, as against Williams, although absent when they were uttered, were neither hearsay nor irrelevant but part of the *res gestae.*

2. That the District Court had erred in permitting Mrs. Williams to testify that one, BOB CARSON, who was a member of the posse, and who was subsequently introduced as a witness for the defendant, had stated in her presence at Williams' house, a few minutes after Williams had been killed, and while his body lay on the floor "they had come to kill Lem Williams and they had killed him" on the ground that such testimony was hearsay and not part of the *res gestae,* nor a declaration of a co-conspirator, nor a statement of an employee of the defendant, as held by the District Court.

VII.

Your petitioner respectfully shows that the two Judges of the District Court not only did not err in either of the said two rulings, but that, even if the said rulings were held erroneous, that they were purely technical errors which could not possibly affect the substantial rights of the defendant and that the Court of Appeals erred in not applying the provision of Sec. 269 of the Judicial Code, as amended by Act of February 26, 1919, Ch. 48, 40 Stat. at L., 1181, Compiled Statute, 1246, which reads:

> "The Court shall give judgment after an examination of the entire record before the Court without regard to technical errors, defects or exceptions which do not affect the substantial rights of the party."

VIII.

Your petitioner further shows, that the Court of Appeals has based its reversal for the first alleged error on the ground that the defendant had predicated its defense on a showing that the party or posse had been legally created and was legally bent on serving the warrant of arrest with no ulterior motive and that the defendant was entitled to show that there was need of a number of officers, instead of a single one, to safely accomplish the arrest; whereas, the evidence before the jury tended to show that there was no warrant of arrest for Williams, who had committed no offense, that in so far as he was concerned there was no justification to appoint a posse for his arrest, that he was absent when the threatening words

were uttered and knew nothing about them and that, therefore, as to him the evidence was hearsay, immaterial and irrelevant.

Petitioner further shows that such an error, if error, could not possibly affect the substantial rights of the defendant, because the testimony before the jury tended to show that the posse, conceding it to have been regularly and legally appointed, was, by reason of its intrinsic character, its composition and its extraordinary number, viz., 75 men armed with guns and rifles to arrest three men, not a posse in the legal sense of the term, but a mob, composed mostly of officers, agents and employees of the defendant and their coconspirators, who had been summoned by the blowing of the Lumber Mill's whistle and who were acting under the guise of a posse, not only within the scope of their authority as such employees, but in execution of a conspiracy to kill Williams and remove him from all activity as a labor organizer for the benefit of the defendant company and that they had carried out their purpose, for they had not arrested Williams, but had killed him and had thereby destroyed organized labor in Bogalusa; hence, the real issue was not whether a posse was needed and had been legally constituted, but whether, by reason of its intrinsic character and its achievements, which revealed its motive, it was a posse in the true sense of the term.

IX.

Your petitioner shows that the ruling of the Court of Appeals on the second point was founded upon the argument that the testimony was hearsay and not part

of the *res gestae*, but the record shows that Carson's statement was a spontaneous exclamation made at the time of great excitement and when he did not have any opportunity to think or reflect and was, therefore, a spontaneous response to the shock of the terrible slaughter and shooting, for the reason that he was there on the scene of the killing, on the property of deceased and heavily armed, his co-conspirators and co-tort feasors also armed; and, that it was, moreover, an admission of an agent in the performance of his duty within the scope of his employment; for, the question whether or not Carson was an employee and an agent was a question for the jury, as there was affirmative evidence tending to show that he was an employee and the destruction of the books of the Company, after the action for damages had been instituted, tended to show that these books would have revealed his employment; that the conspiracy moreover had not terminated, because Carson was still armed and on duty and shielding his co-conspirators against future civil action and criminal prosecution.

Your petitioner further shows that, conceding that it was error to admit this testimony, yet it could not possibly affect the substantial rights of the defendant, because this testimony added nothing to what the jury already knew, *i. e.*, the jury knew that Williams had been killed; they knew that the mob had come to kill him because they not only had not arrested him, but had had no warrant for his arrest, and had killed him, so that the intent to kill was a presumption arising necessarily from the killing.

XI.

The Court of Appeals did not disclose and the defendant did not discharge the burden of showing what substantial rights had been affected by either or both of these technical errors nor have they disclosed and shown that the verdict would have been otherwise affected.

XII.

Your petitioner further shows that it is of exceedingly grave importance that there be a clear and definite determination, interpretation and application of the provisions of Sec. 269 of the Judicial Code, as amended by the Act of February 26th, 1919, Comp. Stat., 1246, and that the Court define what is meant by "TECHNICAL ERRORS WHICH DO NOT AFFECT THE SUBSTANTIAL RIGHTS OF THE PARTY"; that the decision of the Court of Appeals is in conflict with the weight of authorities and that the Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, because of the gravity and importance of the questions involved and the necessity to secure a definite interpretation and the enforcement of the provisions of Sec. 269 of the Judicial Code (as amended by Act of February 26th, 1919) (Comp. Stat., 1246), your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Judges of the United States Circuit Court of Appeals, for the Fifth Circuit, commanding them and each of them to certify and to

send to this Court, on a certain date therein designated, a full and complete transcript of the record of the proceedings of that Court in this case, which were there entitled No. 4849, GREAT SOUTHERN LUMBER COMPANY, PLAINTIFF IN ERROR, v. MRS. L. E. WILLIAMS, DEFENDANT IN ERROR, to the end that the judgment of the said Court in such case may be reviewed, as provided by Section 240 of the Judicial Code (no other method of reviewing being provided by law); and that your petitioner may have such other and further relief or remedy in the premises as this Court may seem appropriate and in conformity with the provisions of the Judicial Code; and that the judgment of the said United States Circuit Court of Appeals may be revised by this Honorable Court.

And your petitioner will ever pray.

MRS. L. E. WILLIAMS,
Individually and As Natural
Tutrix (Guardian).

W. J. WAGUESPACK,
A. T. HIGGINS,
MAX M. SCHAUMBURGER,
Attorneys for Petitioner.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

MRS. L. E. WILLIAMS, individually and as natural tutrix, being first duly sworn, deposes and says:

That she has read the foregoing petition and that all the allegations contained therein are true and correct except those made on information and belief and as to those affiant swears she believes them to be true.

MRS. L. E. WILLIAMS,
Individually and As Natural
Tutrix (Guardian).

Sworn to and subscribed before me,
This 6th day of May, 1927.

M. M. SCHAUMBURGER,
Notary Public.

CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition and in my opinion it is well founded and the case is one in which the prayer of the petition should be granted by this Court.

W. J. WAGUESPACK,
Counsel for Petitioner.

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Respondent.

Brief in Support of Application for Certiorari.

THE OPINION OF THE COURTS BELOW.

The opinion of the District Court is reported in *13 Fed. (2d), 246.*

The opinion of the Circuit Court of Appeals is reported in *17th Fed. (2d), page 468.*

JURISDICTION.

The date of the judgment to be reviewed is February 17, 1927. (R., 1084.) The Court of Appeals denied an application for a rehearing on March 30, 1927. (R., 1096.)

The jurisdiction of the District Court is founded upon diversity of citizenship under Sec. 24 of the Judicial Code; that of the Circuit Court of Appeals, under Sec. 128 of the Judicial Code, as amended by the Act of February 13, 1925, Chap. 229, 43 Stat. L., 936, and the jurisdiction of this Court on this application for certiorari is invoked under the provisions of Sec. 240 of the Judicial Code as amended by Act of February 13, 1925. The jurisdiction of this Court is, therefore, solely statutory and indisputable.

STATEMENT OF THE CASE.

The question presented by this application involves, in the last analysis, the interpretation, construction and application of Sec. 269 of the Judicial Code as amended by Act of February 26, 1919, Comp. Stat. 1246, Chap. 48, 40 Stat. L., 1181, which reads as follows:

> "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial in any case, civil, or criminal, the court shall give judgment, after an examination of the entire record before the Court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

But, two primary questions involving technical errors in the Court of Appeals are also involved, viz:

1. Whether the District Court erred in refusing to allow the defendant to show that Bouchillon and O'Rourke, two white labor union men, while parading the main street of the Town of Bogalusa about two hours before the killing of Williams, with guns, with Dacus, the negro labor organizer, between them, had, by spoken words, threatened any white man who would attempt to take Dacus from them, on the ground that the said words or remarks although uttered in the absence of Williams, who was not to be arrested, still were not hearsay, as against plaintiff, but relevant and part of the *res gestae.*

2. Whether the District Court had erred in permitting Mrs. Williams to testify that one, Bob Carson, who was a member of the so-called posse and who was subsequently introduced as a witness for the defendant, had stated in her presence at Williams' house a few minutes after Williams was killed and while his body lay on the floor "they had come to kill Lem Williams and they had killed him," on the ground that such testimony was hearsay and not part of the *res gestae*, nor a declaration of a co-conspirator, nor a statement of an employee of the defendant, as held by the District Court.

Assuming that the District Court erred in its ruling as to both questions, the ultimate question is:

> "Whether either of these errors or both affect the substantial rights of the defendant within the meaning of the statute or are mere technical errors, which, after an examination of the entire record before the Court, are harmless and for which there should have been no reversal."

ARGUMENT.

I.

The Court of Appeals based its reversal for the first error upon the ground that defendant had predicated its defense on showing that the posse which went to Williams' house had been legally created, and was bent on serving the warrant of arrest with no ulterior motive, and, for that reason, the defendant was entitled to show that there was need of a number of officers instead of a single one to safely accomplish the arrest. To safely accomplish whose arrest? Not Williams', for he was not charged with any offense and there was no warrant for his arrest. There was no justification, therefore, to appoint a posse for his arrest, nor was there any need of a posse, since he was not to be arrested. Hence, the evidence as against plaintiff was not relevant.

If Judge Beattie had admitted the evidence on the ground that as against the plaintiff it was part of the *res gestae* as tending to show the need of a posse to arrest Williams, against whom no warrant of arrest

had been issued, the ruling would have clearly been erroneous. The proposition is, we think, too simple for argument.

But, conceding that it was error to exclude the evidence even as against the plaintiff, although the remarks or words were uttered in Williams' absence and were clearly hearsay and irrelevant as to plaintiff, but conceding that they were relevant, and assuming that the posse was needed to safely accomplish the arrest, and had been legally constituted, the exclusion of this evidence could not affect the substantial rights of the defendant, because the real and material issue before the jury was not whether a posse was needed to make the arrest, but whether the intrinsic character of the so-called posse, its extraordinary number, viz: 75 men armed with pump and shot guns and rifles, to arrest three men, its composition, viz: mostly officers and employees of the defendant, and summoned by the blowing of the defendant's mill whistle, what that posse did, its conduct, its achievement, the wholesale killing of those whom it went to arrest, all revealed the so-called posse to have been not a lawful posse, but a mob, which, under the guise and cloak and mask of a regularly appointed posse of special officers, were merely a mob of 75 armed men acting as the officers and employees of the defendant company within the scope of their employment, for the benefit of the defendant, bent, not on arresting, but on killing Williams, Bouchillon, O'Rourke and Dacus, in order to remove them from the sphere of activity as organizers of the Labor Union, both white and colored, in order to destroy organized labor in Bogalusa.

Hence, the evidence which was excluded was immaterial and harmless and could not affect the substantial rights of the defendant, because an examination of the entire record will reveal that it was the intrinsic character of the posse, its composition and what it did, the malicious killing of Williams, Bouchillon, O'Rourke and two others, and the destruction of labor in Bogalusa, which determined the verdict regardless of whether the posse was needed to make the arrest and had been legally appointed.

The evidence shows that the mob was composed of about 75 men, heavily armed with rifles, pump-guns, double-barrel shot guns loaded with buckshots (R., 211-331-400-401-404-76-77-78-610-662-71-74-77 - 734-47-60-823-37-43-53-85-871-997); that they killed Williams, Bouchillon, O'Rourke, Gaines and Richeau without provocation. (R., 163-64-65-67-69, 214-15-97-98-99-301-2-3-39-42-54-58-60-66-88-94-95-97, 400 - 1 - 2 18-19-48-76-77-79-650-824-825-180-595-604 - 39 - 53-747-48, 215-16-271-310-316-362-376-388-438-453, 625-626-1001-613-647-48-883), and that the walls of Williams' office were riddled with buckshots. (R., 297-397-398-589.)

The motive for the killing is shown by the testimony of W. H. Sullivan, general manager of defendant company and at the same time mayor of the Town of Bogalusa (R., p. 954), viz:

> Q. Did they suggest they were going to organize the colored labor?
>
> A. They said they had it in mind the first time, and we discussed it and I told

them, as far as I knew conditions in the South, it would be a great mistake. The next time they came to see me, they said they had gone a little further and felt they could not make very much progress among Southern saw mills, unless they organized negro labor. I told them I feared if anything of that kind was attempted, it would probably create trouble of some kind.

Q. You had reference to race trouble?
A. Yes sir.

Q. How many negro laborers did you employ at that time?

A. Well, at that time, we were employing, I think, about 2500 men, and about, as I recall it, about sixty per cent of them were darkies.

Among those who were in the mob were Major Guerre, manager of the defendant's lumber plant; Paul LeBlanc, assistant manager of the plant, and foreman of the company; Dr. Brister, superintendent of the company's hospital; McElroyd, Wiley Magee and Bob Carson, guards of the company; Geo. Townsen, sales manager; Mr. Hold, employee of the company (R., 163-64-74-99, 217-18-27, 318-21, 22, 34, 36, 39, 44, 45-95, 96, 400-1-4-50-52-53-76-88-89-93-94-95, 466, 613-616-621-22-25-28-29-83-84-721-928-29-32, 281-360-998-999-1027-28-29-32-35-36 and 37.

Major Guerre, manager of the plant, and Jack Cassidy, assistant general manager, admitted that they were the ones who gave orders to blow the company's

siren whistle as a special "riot signal" for the assembling of the mob which, after having been assembled, proceeded in a large body directly to Williams' home to "intimidate" him. (R., 581-83-84-86-603-18-19-20-21-25-26-27-28-700-90-993-1001.)

Hence, the intrinsic character of the posse and the horrible slaughter which resulted, revealed clearly to the jury the ulterior motive, so that the question whether there was need of a posse and whether it was legally appointed, became utterly immaterial.

II.

The Court of Appeals based its reversal for the second alleged error upon the ground that Carson's statement "that they had come to kill Williams and had killed him," was hearsay and not part of the *res gestae.*

Our contention is that Carson's statement was admissible on all or any one of these several grounds:

(a) As a spontaneous declaration and, therefore, an exception to the hearsay rule.

(b) As an admission of an agent in the performance of his duty within the scope of his employment.

(c) As an admission by a co-conspirator or joint tort feasor in connection with the conspiracy and before the conspiracy had come to an end.

(a)

The evidence tended to show that Carson's statement was a spontaneous exclamation at a time when he did not have opportunity to think or reflect; it was a spontaneous response to the actual sensation produced by the shock of the terrible slaughter and shooting, for the bodies of the murdered men were still lying where they had fallen, and Carson was on the scene of the killing on the property of the deceased, heavily armed, his co-conspirators and co-tort feasors being also present and armed. (R., 484.)

The principle applicable is expressed in *Wigmore on Evidence, Vol. 3, Sec. 1747*, thus:

> "Since this utterance is made under the immediate and uncontrolled domination of the senses, and during the brief period when considerations of self-interest could not have been brought fully to bear by reasoned reflection, the utterance may be taken as particularly trustworthy (or, at least, as lacking the usual grounds of untrustworthiness), and thus as expressing the real tenor of the speaker's belief as to the facts just observed by him; and may, therefore, be received as testimony to those facts."

Nor is this rule limited by time, for it is immaterial whether the statement be made one minute or twenty minutes after the accident, the sole question

being whether the party making the statement did so under the excitement of the moment.

Corpus Juris "Evidence," Sec. 535, p. 448, Sec. 539, page 450.
Insurance Co. v. Mosley, 8 Wal., 407.
Beaver v. Taylor, 1 Wal., 542.

In *Missouri R. R. Co. v. Anderson, 198 S. West Rep.*, the Supreme Court of Texas said:

> "Questions of this kind must largely be left to the sound judicial discretion of the trial Judge who is compelled to view all the circumstances in reaching his conclusions and this Court will not reverse his ruling."

(b)

There was affirmative and circumstantial evidence tending to show that Carson was an employee of the company, and the failure of the defendant to produce the payrolls which were called for by plaintiff by *subpoena duces tecum*, because they have been destroyed by defendant after the filing of this suit, is presumptive evidence tending to show that if the payrolls had been produced they would have revealed that Carson was an employee. The question whether he was an agent of defendant acting within the scope of his authority was, however, for the jury. (R., 63-485-88-89-279-80-81-94-864-65.)

Jones on Evidence, R. P. 536.

(c)

There was evidence tending to show that Carson was a co-conspirator and that the conspiracy was not ended, because Carson was still on the premises heavily armed as a guard and was keeping disinterested parties from coming in and, as such, manifestly keeping out disinterested witnesses who might be used as valuable witnesses against the Great Southern Lumber Co., in any damage suit resulting from the killing. (R., 864-871.)

There was evidence tending to show that some of the conspirators were actually placing guns and ammunition in Williams' office to make it appear that Williams and his associates were prepared to resist them, and Carson was stationed as a guard for the purpose of stopping any outsider from entering the premises. (R., 478-79.)

Hence, the statement was admissible as evidence not only upon one ground, but upon three grounds, one of which alone was sufficient.

But, assuming and conceding *arguendo* that the admission of the evidence was error as being hearsay, it could not possibly affect the substantial rights of the defendant, because it added nothing at all to what the jury already knew. The jury knew that Williams had been killed; they knew that the mob had no warrant for his arrest, and, therefore, that they had not come to arrest him, but they knew that the mob had

killed him, and they knew of the circumstances attending the killing, and since he was not to be arrested the presumption to kill him arose necessarily from the killing and the extraordinary circumstances surrounding the killing. Hence, the evidence was immaterial and harmless.

THE JUDGMENT OF REVERSAL WAS CONTRARY TO THE WEIGHT OF AUTHORITIES.

It is indisputable that the burden of proof to show prejudicial error from the whole record was upon plaintiff in error.

Armstrong v. U. S., 16 Fed. (2), 65.
Shuman v. U. S., 16 Fed. (2), 457.
Haywood v. U. S., 268 Fed., 795.
Simpson v. U. S., 289 Fed., 188.
Rich v. U. S., 271 Fed., 566.
Horning v. Dist. of Col., 254 U. S., 135.
Parker, et al., v. Elgin, 5th Fed., 2nd Series, p. 562, C. C. A., 6th Circuit.
Mitchell v. Pittsburgh Rd. Co., 13th Fed., 2nd Series, p. 704.

Defendant, plaintiff in error, has failed to discharge this burden of proof. Your petitioner, however, has clearly shown, we think, that both errors, if they were errors, did not affect the substantial rights of the defendant, and were harmless, as shown by the whole record.

The following authorities show that the judgment of the Court of Appeals is against the weight of authorities both in this Court and in all the Circuit Courts of Appeals:

U. S. v. River Rouge Co., 269 U. S., 411, 46 S. C., 144.
Belisle v. Lisk, 16 Fed. (2), 261.
Yazoo R. R. v. Mullens, 249 U. S., 531, 39 S. C., 368.
Horning v. Dist. of Columbia, 254 U. S., 135, 41 S. C., 53.
Garcia v. U. S., 10 Fed. (2d), 355.
Kremer v. U. S., 11 Fed. (2d), 722.
Carpenter v. U. S., 280 Fed., 598.
Popham v. U. S., 11 Fed. (2nd), 966.
Rich v. U. S., 271 Fed., 566.
Reid v. Baker, 288 Fed., 969.
Weinstein v. U. S., 11 Fed. (2nd), 505-509.
Redmond v. U. S., 8 Fed. (2), 24-29.
Barron v. U. S., 5 Fed. (2nd), 799-804.
Lewis v. U. S., 11 Fed. (2), 745-747.
Tenebaum v. U. S., 11 Fed. (2), 927.
Bank v. Brown, 8 Fed. (2), 521.
Chew v. U. S., 9 Fed. (2), 348.
Harris v. U. S., 10 Fed. (2), 358.
Ohio Bank v. Greenebaum Bank, 11 Fed. (2nd), 87-91.

The trial of this case lasted more than four weeks. A great mass of evidence was taken and a wide range

of inquiry covered. Your Honors have said in *U. S. v. Trenton Potteries Co.*, decided February 21, 1927, *47 Sup. Ct. Rep., p. 382:*

> "In such a case a new trial is not lightly to be ordered on the grounds of technical errors in ruling on the admissibility of evidence which do not affect matters of substance."

CONCLUSION.

We submit that this case presents ultimate questions which are of vast importance, not to petitioner only, nor to the South only, but to the whole nation, viz:

(1)

Whether rich and powerful corporations in the South shall destroy organized labor, both white and colored, by unlawfully killing the leaders of organized labor under the cloak of law with impunity and without compensation.

(2)

Whether the constitutional right of jury trial in civil actions shall be set at naught by technicalities and harmless error.

(3)

Whether the fundamental principles and rules of evidence and the discretion of the trial Judge, wisely exercised, in the exclusion and the admission of evidence shall be obliterated.

(4)

Whether the Act of February 26, 1919, shall be construed as merely directory and discretionary and not at all as mandatory.

We, therefore, respectfully urge that this case is peculiarly one calling for the exercise by this Court of its supervisory power in order that the questions propounded may be settled for the benefit of the whole country, and that to such an end a writ of certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals and should finally reverse it.

Respectfully submitted,

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New Orleans, May 9, 1927.